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SECRETARY

COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET

MINE SAFETY REVIEW COMMISSION
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**MINE SAFETY REVIEW COMMISSION
MINUTES**

MINUTES OF THE REGULAR MEETING OF JULY 10, 2008: A MEETING OF THE MINE SAFETY REVIEW COMMISSION (HEREINAFTER "MSRC" OR "COMMISSION") WAS HELD IN THE CONFERENCE AND HEARING ROOM OF THE COMMISSION LOCATED AT 132 BRIGHTON PARK BLVD., FRANKFORT KY.

- ❑ **Members Present:** Chair and Commissioner Denise Moore Davidson, and Commissioner William D. Donan were present. Also in attendance MSRC Hearing Officer and General Counsel Bryon Alan Thompson.
- ❑ The meeting was **called to order** at 9:00 a.m. EST
- ❑ **Declaration of a Quorum:** Upon the call of the meeting, Commissioner Donan made a motion that a quorum was present, which was seconded by Commissioner Davidson. The motion carried unanimously, and was so Ordered.
- ❑ **Welcome Guests:** Counsel for the Kentucky Department of Natural Resources, Office General Counsel was present representing the Office of Mine Safety and Licensing. The Office of General Counsel was represented by Hon. Jennifer Smock and assisted by Kari Sutherland, Mary McCoy, Tara New and staff attorneys for OGC; Lentz, Thompson, Morrison and Geisler were present as counsel for OMSL.
- ❑ The **minutes** for the meeting on **06/12/08** were discussed. Commissioner Donan made a motion for approval, which was seconded by Commissioner Davidson. The motion carried unanimously, and was so Ordered. Chair Davidson signed the minutes.

- **OMSL Motions for Sanctions & Permanent Revocation for failure to comply with terms of the Settlement Agreement & Final Order by MSRC resolving KRS 351.120(12) workplace suspension for alcohol and substance abuse:**
 - 07-MSRC-223 **Rodney Nobel**, was called. He did not appear or participate and no one on his behalf filed any response. OMSL moved for **permanent revocation** based upon his failure of an employer's drug test a violation of the settlement agreement. Commissioner Donan made a motion to **grant** the motion which was seconded by Commissioner Davidson. The motion carried unanimously, and was so Ordered upon the signature of Davidson.
 - 07-MSRC-241 **Johnny Halcomb**, was called. He did not appear or participate and no one on his behalf filed any response. OMSL moved for **permanent revocation** based upon his failure to submit drug tests a violation of the settlement agreement. Commissioner Donan made a motion to **grant** the motion which was seconded by Commissioner Davidson. The motion carried unanimously, and was so Ordered upon the signature of Davidson.
 - 07-MSRC-008 **William K. Jervis** appeared and requested a **settlement** which was incorporated in an amended settlement agreement and submitted for MSRC approval. Commissioner Donan made a motion to **grant** the motion which was seconded by Commissioner Davidson. The motion carried unanimously, and was so Ordered upon the signature of Davidson.
 - 06-MSRC-042 **Ralph Hurley** and 07-MSRC139 **Richard Caudill** were called and OMSL moved for a **continuance** to August 14. Commissioner Donan made a motion to **grant** the motion which was seconded by Commissioner Davidson. The motion carried unanimously, and was so Ordered upon the signature of Davidson.
- **KRS 351.120(12) Petitions heard regarding miner appeals of workplace suspension for alcohol and substance abuse – “simple” revocations:**
 - The Commission discussed the procedurally similar KRS 351.120(12) appeals of: 07-MSRC-090 **Jeffrey Sloan**, represented by counsel Hon. Parker and 07-MSRC-243 **Jared Stanley**, represented by counsel Hon. Clark when called. They either appeared or phoned prior to the hearing and moved for **continuances** to **August 14**. Commissioner Donan so moved as to each. These were seconded by Commissioner Davidson. The motions carried unanimously, and were so Ordered. Commissioner Davidson signed the Orders.

The Commission discussed each in turn the procedurally similar KRS 351.120(12) appeals from suspensions for alcohol and substance abuse policy violations of 08-MSRC-169 **Jeffrey Kilbourne** (heard at 11:00), 08-MSRC-146 **Justin K. Smith**, 08-MSRC-153 **Earl David Charles**, 08-MSRC-155 **Tony Alan Gilliam**, 08-MSRC-158 **James Franklin Rich**, 08-MSRC-168 **Justin Caudill**, and 08-MSRC-170 **Tim Cornett**, in turn. Every one of these Petitioners appeared and tendered a **Settlement Agreement** and Motion to Approve the same. Commissioner Davidson requested and received a waiver from each Petitioner for the determinations on Smith and Cornett citing a conflict. Commissioner Donan made a motion to **grant**, each of their settlements which were seconded as appropriate. The motions carried unanimously, and were so Ordered. Chair Davidson signed the Orders.

- The Commission called **Tommy Dewayne Seals** in 08-MSRC-078 and he requested a hearing. Seals testified that he did not refuse testing but instead was terminated for missing too much work. OMSL called two witnesses who described the circumstances of the refusal. The file was left open for him to submit drug tests from other employers concurrent with the alleged refusal.
- The Commission called also the KRS 351.120(12) Petition for Appeal of 08-MSRC-136 **Jason Barger**, 08-MSRC-162 **Buford McIntosh**, and 08-MSRC-171 **Coleman Holland** who were duly notified and scheduled for the hearing *they* requested for this meeting. **None** of them **appeared** and were each Ordered to **Show Cause** as to why their certificates should not be revoked upon order at the next meeting. Commissioner Donan made the motion for Show Cause which was seconded by Commissioner Davidson. The motion carried unanimously, and was so Ordered. Chair Davidson signed the Orders.
- The Commission also considered 08-MSRC-104 **Chad Bentley**, and 08-MSRC-151 **Todd Barnett**; who failed to appear despite notice at the last meeting and also failed to appear, answer or participate in the Show Cause set for this meeting. Commissioner Donan made the motion to **revoke** which was seconded by Commissioner Davidson. The motion carried unanimously, and was so Ordered. Chair Davidson signed the Order.

The 11:00 a.m. Docket for KRS 351.120(12) workplace alcohol and substance abuse suspensions that were not appealed – “simple” revocations:

- The Commission called and then granted the motions by OMSL for **revocation** in the following procedurally similar cases. No one appeared on behalf of any Respondent miner and no Respondent appeared despite notice by certified mail with a return as to each; 08-MSRC-154 **Jason L. Coleman**,

08-MSRC-161 **Richard Craig Yonts**, 08-MSRC-164 **Zachary Caudill**, 08-MSRC-165 **Mark A. Pennycuff**, 08-MSRC-166 **Donny Allen Jones**, and 08-MSRC-167 **Billy R. Coleman**. Commissioner Donan made a motion to **grant**, each of the OMSL Motion for Revocations which were seconded as appropriate. The motions carried unanimously, and were so Ordered. Chair Davidson signed the Orders.

- The Commission also ruled favorably on the proposed **settlement** tendered in the following OMSL Show Cause hearing for revocation: 07-MSRC-161 **Howie Joe Young**, 08-MSRC-150 **Casey A. Fain**, 08-MSRC-159 **Ricky Jason Smith**, and 08-MSRC-160 **Anthony W. Potter**. Commissioner Donan made a motion to **grant**, the OMSL Motion for settlement which was seconded as appropriate. The motion carried unanimously, and was so Ordered. Chair Davidson signed the Order.
- OMSL also moved to **continue** 08-MSRC-156 **James Edward Mullins**, and 08-MSRC-163 **Jeremy K. Raschella** to August 14, 2008 for further investigation. Commissioner Donan made a motion to **grant**, the OMSL Motion for settlement which was seconded as appropriate. The motion carried unanimously, and was so Ordered. Chair Davidson signed the Order.
- The Commission called 08-MSRC-134 **Adam K. Rose** and whereas he failed to appear at the last meeting and his hearing continued to this meeting OMSL moved to **Show Cause** as to why his certifications should not be revoked at the August meeting. Commissioner Donan made a motion to **grant**, OMSL's motion which was seconded as appropriate. The motion carried unanimously, and was so Ordered. Commissioner and Chair Davidson signed the Order.

The 11:00 a.m. Docket for "initial denial" pursuant to KRS 351.184(5) for failure of the pre-certification alcohol and substance abuse testing:

None were submitted for this meeting.

The 11:00 a.m. Docket for Motions to Reconsider:

- The Commission took up the matter of reconsideration for 08-MSRC-099 **Norman C. Couch**. He stated that he was unable to appeal his previous suspension because the suspension notification and other Show Cause information regarding the hearing were delivered to and accepted by an address that was not his. OMSL prepared and presented a **settlement** agreement Commissioner Donan made a motion to **grant**, the OMSL Motion for settlement which was seconded as appropriate. The motion carried unanimously, and was so Ordered. Chair Davidson signed the Order.

The 11:00 a.m. Docket for “traditional” type cases:

- The Commission called 05-MSRC-010 Banks, Smith & **Horn**; in regard to a settlement for Horn, and OMSL made a motion to enter a **settlement** agreement at this meeting. Commissioner Donan made a motion to **grant**, the OMSL Motion which was seconded as appropriate. The motion carried unanimously, and was so Ordered. Chair Davidson signed the Order.
- Upon the call of 07-MSRC-198 **Pacholewaski**, OMSL Counsel Hon. Boyd informed the Commission that Respondent in the case and OMSL had reached a **settlement** agreement. After consideration MSRC determined that this motion should be **granted**. Commissioner Donan so moved, Davidson gave the second and Davidson signed the Order.
- The Commission called 08-MSRC-033 Short & **Gossett**; and OMSL made Motion to **Dismiss** Gossett. The Motion to Dismiss Gossett was tendered with a statement that he waived any conflict by having Commissioner Donan consider his case. Commissioner Donan made a motion to **grant**, as to the settlement and it was seconded as appropriate. The motion carried unanimously, and was so Ordered. Chair Davidson signed the Order.
- The Commission called 08-MSRC-111 **Wolford, Adkins & Chapman**. Attorney Boyd made a motion to **continue** the consideration of this and another **settlement** agreement to the August meeting. Donan made a motion to **grant**, as to each and they were seconded as appropriate. The motions carried unanimously, and were so Ordered. Chair Davidson signed the Orders.
- **Petitions for an Order filed by OMSL in roof control cases:**

None were filed for this meeting.

Old Business

Ratification of Final Order: *None were filed for this meeting.*

□ Administrative Hearings Update;

The Commission discussed briefly the continuing high number of cases set for the next meeting on Thursday July 10, and the possibility of one traditional type hearing.

□ **Status Report & Abeyances;**

08-MSRC-115 **Moore & Rutherford** status remains in abeyance because of the ongoing **MSHA Section 110(c) investigation** and shall have a status report due on December 8, 2008.

□ **Appeals**

- The Commission discussed the appeal to Franklin Circuit Court of the Final Order in **Hobert Hoskins** 05-MSRC-007 now 05-CI-01702 in Division I. The Commission was informed that Judge Sheppard Ordered a **briefing schedule**. Counsel for OMSL is to file a Motion to Dismiss for the reason that the case is moot due to the passage of time exceeding the probationary period ordered with no further violations.
- The Commission discussed the status of the appeal to Franklin Circuit Court of the Final Order in 04-MSRC-002 **Willie "Tick" Sizemore**, et al. and learned that it had been appealed to the **Court of Appeals**.
- The Commission discussed the status of the appeal to Franklin Circuit Court of the Final Order in 05-MSRC-004 **Simon Ratliff**, and was informed that Hon. Barbara Pauley is filing a **briefing schedule**.
- The Commission discussed the status of the appeal to Franklin Circuit Court of 06-MSRC-005 **McCoy & Short**, 07-CI-1981, Division 1. The matter is being **briefed** by Hon. Larry Moscoe.
- The Commission discussed the status of the appeal to Franklin Circuit Court of the Final Order in 07-MSRC-088 **Jerry J. Maggard**, et al. Hon. Smock, counsel for OMSL stated that they were **briefing** the matter.

New Business

□ **Office & Administrative;**

- The General Counsel advised that the **mileage** remains to forty nine (49) cents per mile.

□ **Training**

- **Required Hearing Officer Training:** No training is currently scheduled.

- ❑ **Executive Session:** The Commission adjourned to conduct an Executive session to discuss the Probable Cause Determinations and then reconvened to issue orders below as appropriate.

- ❑ **Probable Cause Determinations**

The following case was discussed and then the Commission determined that Probable Cause was appropriate in the amendment of 08-MSRC-124 **Cyfers & Williamson**. OMSL moved to amend the Complaint so that the correct Respondent Williamson could be served. Commissioner Donan so moved, Davidson gave the second and Davidson signed the Order.

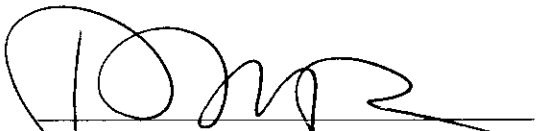
- ❑ **Settlement Agreements**

The Settlement Agreements were managed as indicated above in the Motions and suspensions sections.

- ❑ **The Time Memo and Travel Vouchers** were signed and submitted for payment by the General Counsel.
- ❑ **NEXT MEETING:** The Commissioners acknowledged that MSRC is regularly scheduled for a regular two day meeting on Starting on **Thursday August 14** 2008.
- ❑ **Adjournment:** Commissioner Donan made a motion to adjourn, which was seconded by Commissioner Davidson. The motion carried unanimously, and was so Ordered.

The next meeting of the Mine Safety Review Commission will be held on Thursday August 14, 2008. The meeting will be held in the conference and hearing room of the Commission located at 132 Brighton Park Blvd., Frankfort KY.

Approved:


Chair Denise Moore Davidson
Mine Safety Review Commission

8/14/08
Date